IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.628 OF 2004

The Municipal Corporation of the
City of Pune ..Petitioner.

Vs.

M/s. Automatic Control Equipments ..Respondent.

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Mr. R.M. Pethe i/b Mr. R.G. Ketkar for the Petitioner.
Mr. M.S. Lagu for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

16th March, 2006.

P.C. :

1. Rule. Counsel appearing for the Respondent waives service. By consent, taken up for hearing and final disposal.

2. This Petition arises out of an order passed by the Additional District Judge, Pune on 28th February, 2002. The proceedings before the Additional District Judge were in an appeal preferred by the Respondent against an order of the Additional Chief Judge of the Small Causes Court dismissing an appeal against the determination of rateable value.

3. The Electronic Co-operative Estate Limited is a society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and formed for the purpose of providing industrial plots to its members. The State Government had allotted land on lease to the co-operative society and the society divided the land into 41 plots each with an area of 3600 sq. feet. The Respondent is a member of the society to whom plot No.27 admeasuring approximately 3600 sq. ft. has been allotted. Initially the Respondent constructed a structure consisting of a ground floor and first floor, in 1980-81, each floor admeasuring 1200 sq. ft. The Municipal Corporation had fixed the rateable value of each of the two floors at Rs.3800/- (NR) or in other words, the total rateable value was Rs.7600/-. Subsequently, the Respondent commenced the construction of a second floor and the construction was completed in February 1994. The Municipal Corporation proposed to enhance the rateable value by a special notice issued on 20th March, 1995 to Rs.28,500/- with effect from 1st February, 1994. In respect of the determination of the rateable value, objections were invited from the Respondent and after hearing the objections, the rateable value was fixed at Rs.2.10 per sq. ft. for the second floor. Aggrieved by the determination of the rateable value, the

Respondent moved the Small Causes Court at Pune. The appeal was dismissed under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949. The appeal was dismissed on 21st January, 2000. Against the dismissal of the appeal, the Respondent moved the Additional District Judge at Pune in Civil Appeal 206 of 2000 which was allowed by an order dated 28th February, 2002. By the impugned order the annual rateable value for the entire building was fixed at Rs.19,500/- and the Corporation was directed to assess the tax on that basis.

4. The Additional District Judge while considering the merits of the appeal noted that the ground floor and the first floor had been constructed much earlier, in 1980-81 for which a total rateable value of Rs.7,600/- had been fixed. The second floor has been constructed in 1994. The rateable value being the rent which may reasonably be expected to be realized in respect of the property, the rateable value of the second floor which had been completed in 1994 would have to be higher. The Additional District Judge seems to have proceeded on the basis that after the second floor was reconstructed in 1994, the Municipal Corporation had reassessed the rateable value of the entire property viz. of the

ground floor, first floor as well as the second floor again. Counsel appearing for the Petitioner is justified in submitting that this finding of the learned Additional District Judge is erroneous. From paragraph 6 of the written statement of the Municipal Corporation it emerges that the area of the second floor is 975 sq. ft. The Corporation had taken a reasonable rent of Rs.2.10 per sq. ft. and at that rate, the total rent would amount to Rs.2047.50 p. month. The actual rent thus worked out to Rs.24,570/-. After allowing the benefit of a 15% standard deduction, the rateable value of the second floor would work out to Rs.20884.50 and, if to this, the rateable value of the ground and first floors is added, the total rateable value would work out to Rs.28,484/- rounded of at Rs.28,500/-. In these circumstances, it is evident that it was only the rateable value for the second floor that was fixed by the Municipal Corporation after the second floor was added to the existing structure.

5. The First Appellate Court proceeded on the basis that the approximate cost of the second floor would be Rs.2 lacs. It seems to be also the basis on which the Trial Court had proceeded. Now a perusal of the evidence of the Respondent would show that

though he had maintained the accounts of the construction of the second floor, those accounts had not been produced in the Court. The Respondent did not recall as to whether he had produced the accounts before the assessing authority . In this state of the matter, the figure of Rs.2 lacs as the cost of construction would appear to be purely hypothetical and without any foundation in the evidence. In these circumstances, the computation of the rateable value by the Additional District Judge seems to be based only on surmise. The Respondent as already noted did not produce his accounts. The second witness who deposed in support of the case of the Respondent also has his establishment in proximity to the area in the occupation of the Respondent. He stated that he was unable to exactly state that how much he has paid to the society for each floor, but that may be Rs.2 lacs per floor. His construction appears to have been made in 1986-87. In my view, the order of the Learned Additional District Judge is erroneous for both the reasons that have been cited above. Firstly, the order proceeds on the basis that the Municipal Corporation had reassessed the entire rateable value for the ground floor, first floor as well as the second floor after the construction of the second floor was complete. This, it would appear, is factually incorrect. Secondly, the basis on

which a ratable value of Rs.11,900/- has been taken for the second floor is an estimate of construction of Rs.2 lacs which is not supported by any evidence. In these circumstances, the order of the Learned Additional District Judge dated 28th February, 2002 is quashed and set aside. Civil Appeal 206 of 2000 shall stand remitted back to the file of the Additional District Judge, Pune for reconsideration and for fresh decision on merits in the light of the observations contained herein above. The parties shall appear before the Learned Additional District Judge on 3rd April, 2006 for receiving directions. The Learned Additional District Judge is requested to expedite the disposal of the appeal and endeavour to do so by the end of August 2006. In the meantime, the Respondent shall continue to deposit the arrears of property tax on the basis of the rateable value as determined by the Municipal Corporation, subject to such adjustment as warranted after the final decision of the Additional District Judge. It would be open to the parties to apply for leading such additional evidence as they may be advised to do. The Petition is disposed of in these terms. No costs.